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Assistant Attorney General for the  
Environment and Natural Resources Division  
United States Department of Justice  
Washington, D.C. 20530

August 26, 1995

RE: United States vs Terry Shaner, et al.  
DOJ Ref. # 90-11-3-76  
comments relating to proposed consent  
decree - (Federal Register: July 27, 1995  
Volume 60, Number 144).

Dear Sir or Madam:

The following comments with respect to the above-captioned consent decree are submitted on behalf of the L.E.A.D. Group. The L.E.A.D. Group is a group of concerned citizens who reside in Laureldale Borough and Muhlenberg Township, Berks County, PA., in the vicinity of Exide/General Battery Corporation's facility in Laureldale, PA. (The undersigned, Alfred A. Siess, Jr., serves as a technical consultant to the L.E.A.D. Group).

The L.E.A.D. Group objects specifically to the first part of condition (5) of the consent decree applicable to General Battery Corporation (GGBC'), whereby GBC "has agreed...to perform those activities required by the Record of Decision ('ROD') for Operable Unit Two of the final Site remedy (Excavating lead contaminated soil above 1000 parts per million, transport of the contaminated soil to GBC's Off-Site innovative thermal treatment facility...)".

The original Proposed Plan for remediation of the Brown's Battery Superfund Site, published by the EPA in January 1992, preferred alternative "2" which, in part, consisted of excavation of contaminated soils and battery casings with onsite solidification and disposal in a permitted hazardous "residual" waste landfill. There was no alternative considered in the plan for incineration at any location.

The original plan was revised at the behest of General Battery Corporation, a wholly-owned subsidiary of Exide Corporation. The revised Proposal Plan, published by the EPA in April, 1992, included the Exide/GBC proposed alternative to investigate, design and install an "innovative" process to incinerate the soil from the Brown's Battery Site at the Exide facility in Laureldale.

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EPA selected GBC's innovative technology as the remedial action for the Brown's Battery Site in a Record of Decision dated July 2, 1992. This ROD was published after the public comment period associated with the revised Proposed Plan had closed. The L.E.A.D. Group, and other citizens and elected officials residing in the vicinity of the Exide Laureldale facility, did not learn of this revision until after the ROD was published. As a consequence, those most adversely affected by this revised ROD had no opportunity to participate in the decision. (Subsequent inquiries to the EPA from the L.E.A.D. Group were unsuccessful in obtaining consideration of their grave concerns with this decision by the EPA. (Indeed, by letter dated August 2, 1993 Stanley L. Laskowski wrote on behalf of the Acting Regional Administrator for Region III of the EPA, in a letter to Mr. Charles R. Tobias of the L.E.A.D. Group,

"The Environmental Protection Agency ("EPA") does not, as a matter of course, request public comment on a Proposed Plan from citizens living near a location that will be receiving waste from a Superfund Site. The primary area of concern, insofar as the Superfund process is concerned, is the area immediately surrounding the Superfund Site. At the Proposed Plan state EPA does not normally know where the waste will be disposed of or if, in fact, it will leave the Site at all. A disposal facility is not usually chosen until the remedy has been designed.")

Ironically, Mr. Laskowski acknowledged in his August 2, 1993 letter that..."The Brown's Battery Proposed Plan was an unusual case in that EPA was aware of the location proposed by General Battery for the thermal treatment." He did NOT, however, offer the citizens any opportunity to comment upon, or to alter, the decision to send Superfund hazardous wastes to Laureldale. Instead, he offered the following "assurances".

"EPA believes that the interests of the people of Laureldale Borough will be protected during the Brown's Battery remediation in several ways. First, as detailed in response to your letter of March 11, 1993, EPA's "Offsite Policy" specifies that contaminated material from the Brown's Battery Superfund Site cannot be accepted by the Laureldale facility unless the following conditions continue to be met:

1. There must be no relevant violations of State or Federal laws at or affecting those units at the facility receiving hazardous waste from the Site. Relevant violations include violations of regulations or permits designed to both prevent releases of hazardous substances and ensure early detection of such releases;
2. There must be no releases of hazardous substances from those receiving units, and contamination from prior releases at the receiving units must be addressed as appropriate; and

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3. Releases of hazardous substances from other units at the Exide facility must be addressed as appropriate.

"Failure by the Exide Laureldale facility to meet these conditions would preclude the transportation of hazardous substances to that location for treatment."

Mr. Laskowski provides further assurances:

"In addition, EPA believes that the interests of the people of Laureldale Borough are protected by the other environmental laws which regulate the Exide plant. Under the authority of the Hazardous and Solid Waste Amendments (HSWA) of 1984, which amended the Resource Conservation and Recovery Act (RCRA), EPA is implementing corrective action to address potential releases from past disposal activities in former landfills on the site."

"In March 1992, when the National Enforcement Investigation Center (NEIC) conducted a multi-media inspection of recycling operations at Exide, all areas of concern in the lead-smelting process were observed for potential violations. Furthermore, waste management practices are routinely monitored under RCRA regulatory procedures and the EPA Corrective Action permit to safeguard water. Under the Clean Air Act, air emissions are also regulated.. Thus, compliance with Federal Standards is regulated in all media --air, soil and water."

"Please be assured that, in accordance with the Offsite Policy, EPA will assess environmental violations and the releases of hazardous substances from the Exide Laureldale facility before allowing battery casings and contaminated soil from the Site to be brought there for thermal treatment. EPA welcomes continued citizen reactions and comments about environmental conditions in Laureldale."

As it now stands, the consent decree, which is the subject of this letter, would allow Exide/GBC to transport the contaminated soil to GBC's "off-site innovative thermal treatment facility" at Laureldale.

IN FACT, THERE IS NO INNOVATIVE THERMAL TREATMENT FACILITY AT LAURELDALE! (To our knowledge there is also: no such facility at Muncie, Indiana, or at any other Exide/GBC facility.)

This has not stopped Exide/GBC, by their own admission, from burning "THOUSANDS OF TONS" OF SUPERFUND HAZARDOUS WASTES AT LAURELDALE AND MUNCIE DURING THE PAST THIRTY-SEVEN MONTHS!

Despite all of the "assurances" given by the EPA, both the EPA and the PA DEP acknowledge that the burning of Superfund hazardous wastes at Laureldale has been done WITHOUT STATE OR FEDERAL PERMITS!

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In addition, as a result of public concern that the Laureldale facility, which has been the source of outrageous pollution for the past FORTY YEARS, would be allowed to accept the Brown's Battery wastes, the citizens have documented the fact that Exide/GBC has also been in virtually continuous gross, often negligent and willful, non-compliance with virtually every existing federal law designed to regulate the company's permitted battery recycling operation. (Indeed, with respect to their PSD Permit No. 78 PA 22, regulating SO<sub>2</sub> emissions, the company has had permit violations numbering in the thousands in the thirteen year period since 1981. That permit was revised in 1982 indicating that the company has been in continuous violation for THE ENTIRE LIFE OF THE PERMIT!)

During the past two years we have met with the EPA and the DER (now DEP) on several occasions, including meetings with DER regional administrator and meetings with EPA region III administrator, Peter Kostmayer. We have had countless contacts with Federal, state and local elected officials; have fought to get public hearings on the issues; have testified at three of those hearings in Laureldale; have held town meetings, written letters, video-taped and made written records of accidents at the Exide/GBC facility, as well as environmental and O.S.H.A. violations by the company. We have taken our concerns to the newspapers and to the local television station.

The agencies and elected officials have also expended considerable effort in trying to obtain compliance from Exide/GBC in the past several years, all without success. Exide/GBC CONTINUES TO OPERATE WITHOUT BENEFIT OF PERMITS and to VIOLATE TERMS OF PERMITS THEY DO HAVE!

With respect to the consent decree condition to which we object, the following can be demonstrated:

1. The revision to the Brown's Battery ROD results in a considerable economic advantage to Exide/GBC. The option of burning the waste at Laureldale was described by the EPA as the least costly of the five options considered in the revised plan. Exide boasted to their stockholders that the "innovative technology" option would cost only \$11 million, as opposed to EPA's \$28 million estimate for the originally recommended option.

Additionally, the company stated that they would finance needed improvements to the Laureldale facility with these same funds. (Exide also received a \$300,000 federal study grant to help them develop the innovative technology.)

2. By all relevant measures, the citizens of Laureldale and Muhlenberg Township were, at the time of the change in ROD and continue to be, at greater health risk from

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pollution at Laureldale than the citizens of Hamberg and Tilden Township were as a result of Brown's Battery. (The relevant measures include Air Quality, Blood Lead Levels, Lead Levels in Soil and Stream Sediments.)

3. As stated above, Exide/GBC has failed to provide the "innovative technology" upon which the revision to the ROD was based, nor have they demonstrated that it is feasible. The company has failed to provide any reasonable basis for believing that they will, in fact, provide any "innovative technology" at Laureldale if allowed to continue burning hazwaste without permits.
4. The information presented to the public with respect to the "innovative" fuming/gasification or plasma arc furnace is directly contradictory to the information provided to the DER (and EPA?). Compare the "hype" in the press articles of 7/28/95, and 8/12/95 enclosed with the proposal attached to Exide's letter of March 27, 1992 to DER/DEP. The "PR" articles mention a "portable, sealed, plasma-arc furnace" with "temperatures reaching up to 36,000 degrees", capable of recapturing gases "in a closed system without emissions". In the attachment to the 3/27/95 letter a "fuming/gasification furnace" with temperatures of "3,000 degrees F. max" in the "Burn Zone" with very conventional exhaust "to atmosphere" is described in detail. (The "near \$30 million" cost is not explained in the press as EPA's estimate based on the ORIGINAL landfill disposal option.)

In summary, the citizens of Laureldale Borough and Muhlenberg Township have endured more than forty years of intolerable pollution from the Laureldale facility. Residents have suffered and continue to suffer unacceptable risks to their health and to the environment. In all of this time the L.E.A.D. Group, as the leading citizens' advocate in the area, has only asked for two things from the company and the regulatory agencies.

1. That Exide/GBC conduct their permitted battery recycling operation in compliance with all laws and regulations.
2. That Exide/GBC DISCONTINUE their present practice of burning, without permits, hazardous wastes from Superfund or other hazardous waste sites, and that they NOT be permitted to accept such wastes from Brown's Battery or ANYWHERE ELSE!

Clearly, the Record of Decision for the Brown's Battery Site must be changed. It would be unconscionable for EPA to permit ANY Superfund Wastes to be transported to, handled, stored or treated at Laureldale.

Yours very truly,

*A.A. Siess*  
Alfred A. Siess

Enclosures:

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Postscript: This is being mailed 8/26/95 without knowing if an extension to the comment period has been obtained and without benefit of having seen the consent decree. If an extension has been granted we reserve the right to amend these comments as may be deemed appropriate after having the opportunity to review the consent decree.



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